IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.34117 of 2006
MD.ASLAM HUSSAIN
Versus
STATE OF BIHAR & ANR
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6 7.8.2008 Heard learned counsel for the petitioner and the learned A.P.P. for the State. Although notice was duly served on the informant, impleaded herein as O.P. No. 2, he has not cared to appear and contest this application.

Through this application the petitioner prays for the quashing of the order dated 28.2.2006 passed by the learned Sub Divisional Judicial Magistrate, Siwan, in Complaint Case No. 898 of 2005 so far as he is concerned whereby cognizance has been taken under sections 323, 417, 465 I.P.C..

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Manjur Ali, the complainant, impleaded herein as O.P. No. 2, filed the aforesaid complaint against the petitioner, a Marketing Officer, and two others who were dealers under the Public Distribution System alleging that the two dealers were getting allotment of goods but they were not distributing those goods to their customers and fake entries were being made on their ration cards and false receipts were issued. It was also alleged that grains under the Antodya Annapurna Scheme were not being distributed and they used to be threatened by anti social elements and it was for years that neither kerosene oil nor food grains were distributed. It was further alleged that

the Collector directed the petitioner to hold inquiry and report regarding the complaints but the petitioner having held the inquiry deliberately acted against the public interest and all the accused persons have amassed lakhs of rupees.

It is submitted on behalf of the petitioner that he being Supply Inspector in the Food, Civil Supply and Commerce Department with the Govt. of Bihar, after holding the inquiry into the conduct of the two dealers had submitted his inquiry report vide letter no. 234 dated 24.3.2005 wherein he had recommended for suspension of the license of Md. Sharif and cancellation of the license of Md. Daud after seeking explanation from them and the complainant was set up by them in dragging in the name of the petitioner on wrong allegations and the learned cognizance taking Court had taken cognizance without looking at the protection he is entitled to under section 197 Cr.P.C. as also Sections 15 and 15A of the Essential Commodities Act as he had acted in discharge of his official duties. On the aforesaid premise it was submitted that the taking of cognizance so far as the petitioner was concerned was illegal and, therefore, liable to be set aside.

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Apparently the petitioner had inspected the shops of the two dealers under the directions of the Collector which had been forwarded to him by the S.D.O. and in that view of the

matter and in view of his post he was holding, he apparently carrying out the orders of his superior officer in discharge of his official duties and since he was working in discharge of his official duties a proper sanction order from the competent authority was a pre-requisite before the cognizance would be taken against him.

Due regard being had to the facts and circumstances of the case the application is allowed and the impugned order so far as the petitioner is concerned is hereby quashed.

**Spd/-** **(Abhijit Sinha, J.)**

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